IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8261 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SAVAILAL H SHAH

Appearance:

MR SN SHELAT, ADVOCATE GENERAL with MR MR MENGDE, AGP, for the Petitioner.

MR TR MISHRA for Respondent.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 27/09/2002

ORAL JUDGEMENT

The State of Gujarat through the Executive Engineer, Public Works Department, R & B Division,

Ahmedabad, has filed the present petition under Articles 226 & 227 of the Constitution, and challenged legality of judgment and order dated September 30, 1992, rendered by the Labour Court, Ahmedabad, in Recovery Application No. 1292 of 1986, by which the application submitted by the respondent under Section 33-C(2) of the Industrial Disputes Act, 1947 ("the Act" for short) is accepted by the Labour Court, and the petitioner is directed to pay a sum of Rs. 99,736.54 ps. to the respondent being the amount of overtime wages as contemplated by Section 14 of the Minimum Wages Act, 1948.

2. The facts, as they emerge from the record of the case, may be briefly stated :

The respondent was employed as a Clerk in Public Works Department, R & B Division, Ahmedabad on January 1, 1953, in the pay-scale of Rs. 130-240. He retired from service with effect from March 31, 1986, and the last pay drawn by him was Rs.485/- per month in the pay-scale of Rs. 350-500. The total salary paid to the respondent at the time of his retirement from service was Rs.1470.15 ps. The respondent filed Recovery Application No. 1292 of 1986 before the Labour Court, Ahmedabad under Section 33-C(2) of the Act stating inter-alia that though he was liable to work for 48 hours in a week, he had worked for 56 hours in a week from January 1, 1953 till February 28, 1986. According to him, he was entitled to overtime wages in terms of Section 14 of the Minimum Wages Act, 1948, and prayed the Labour Court to direct the present petitioner to pay a sum of Rs. 99,736.54 ps. to him.

3. On service of notice, a reply was filed by the petitioner stating inter-alia that the respondent was a permanent Class-III employee of the State of Gujarat working as a Clerk, and as his service conditions were governed by the provisions of the Bombay Civil Services Rules, 1959 made under Article 309 of the Constitution, he was not entitled to the overtime wages as claimed by him. It was also pleaded that the benefit under Section 14 of the Minimum Wages Act, 1948 was not available to the respondent, as he was receiving wages under relevant Rules, which were much more than the minimum wages prescribed under the said Act. On the above referred to grounds and others pleaded in the written statement, the petitioner had requested the Labour Court to dismiss the Recovery Application filed by the respondent.

4. In support of his claim, the respondent had examined himself at Exh.17; whereas on behalf of the present petitioner, one Mr. Kantilal Maganlal

Dhamanvania was examined at Exh.22. After considering the evidence adduced by the parties and hearing their learned counsels, the Labour Court by the impugned judgment has directed the petitioner to pay a sum of Rs. 99,736.54 ps. to the respondent, giving rise to the present petition.

5. Mr. S.N.Shelat, learned Advocate General for the State, assisted by Mr. M.R.Mengde, learned Assistant Government Pleader, contended that the respondent was receiving wages under the Bombay Civil Service Rules, which were much more than the minimum wages prescribed under the Minimum Wages Act and, therefore, was not entitled to the benefit of Section 14 of the said Act. According to the learned Advocate General, the claim made by the respondent from January 1, 1953 to February 28, 1986, was highly belated one and, therefore, the same should not have been entertained by the Labour Court. What was stressed on behalf of the petitioner was that under Rule 17 of the Bombay Civil Services Rules, 1959, the whole time of the respondent as a government servant was at the disposal of Government and, therefore, he was not entitled to overtime wages claimed in the Recovery Application. According to the learned Advocate General, the judgment impugned in the petition proceeds on misconception of law and should be set aside by this Court. In support of his averments, the learned Advocate General placed reliance on the decision of the Supreme Court in Municipal Council, Hatta v. Bhagat Singh and others, AIR 1998 SC 1201.

6. Mr. T.R.Mishra, learned counsel for the respondent, submitted that the provisions of the Minimum Wages Act were applicable to the petitioner and, therefore, the Labour Court was justified in allowing the claim made by the respondent under Section 14 of the said Act. It was contended that though the respondent was liable to work only for 48 hours in a week, he was made to work for 56 hours in a week and, therefore, was entitled to overtime wages. What was claimed was that the judgment impugned in the petition is based on liberal interpretation of the provisions of the Minimum Wages Act, 1948 and the same should not be interfered with by the Court in the present petition. In support of his submissions, the learned counsel placed reliance on the decision of the Supreme Court in Y.A.Mamarde v. Authority under the Minimum Wages Act (1972)2 SCC 108.

7. I have considered the submissions advanced at the Bar and the documents forming part of the petition. From Paragraph Nos. 3 & 6 of the affidavit-in-reply filed by the respondent in the present petition, it is evident

that the respondent has not claimed the wages for second Saturdays, fourth Saturdays, Public Holidays, or wages for casual leave, earned leave etc. There is no manner of doubt that the claim advanced by the respondent was that he had worked overtime and was, therefore, entitled to overtime wages in terms of Section 14 of the Minimum Wages Act, 1948. In Y.A.Mamarde (supra), the question whether an employee, who is receiving more wages than the minimum wages, is entitled to the benefit of Section 14 of the Minimum Wages Act, 1948, is not specifically considered and answered by the Supreme Court. In the said case, employees working in Octroi Department of the City of Nagpur Corporation, had filed an application under Section 20 of the Minimum Wages Act in the Court of Small Causes at Nagpur, and claimed certain monetary benefits. The case of the Corporation was that the employees were not entitled to overtime wages at double the ordinary rate of wages and, therefore, claim was liable to be rejected. The applications submitted by the employees were dismissed by the Small Causes Court, Nagpur, which was the Authority appointed under the Act. Feeling aggrieved by the order of the Authority, four petitions were filed in the Bombay High Court under Article 227 of the Constitution. It was held by the High Court that ordinary rate of wages contemplated by Rule 25 of M.P.Minimum Wages Rules, 1951, meant ordinary minimum rate of wages. The Supreme Court on interpretation of Rule 25(1) of the Rules held that the employees were entitled to overtime wages at double the ordinary rate of wages actually paid to them, and that the phrase "double the ordinary rate of wages" employed in Rule 25 does not mean double the rate of wages fixed under the Act. The question whether an employee, who is receiving much higher wages than the minimum wages prescribed under the Minimum Wages Act, is entitled to the benefit of Section 14 of the said Act or not, is not considered in the above quoted decision and, therefore, the said decision is of little assistance to the respondent.

8. However, this question has been squarely considered and answered by the Supreme Court in Municipal Council, Hatta (supra). In the said case, the respondents were employees of the appellant-Municipal Council. Their service conditions were governed by the Madhya Pradesh Municipal Service (Scales of Pay and Allowances) Rules, 1967. There was no provision under the said Rules for payment of any overtime allowance. The respondents, who were employed as Moharrirs/peons, filed an application under Section 22 of the Minimum Wages Act, 1948, before the competent authority for payment of overtime on the ground that they were working

for four additional hours everyday. Their application for the period from February 1, 1982 to March 31, 1983 was allowed by the competent authority. The petition filed by the appellant before the High Court was also dismissed. In appeal, the Supreme Court has construed the provisions of Section 14 of the Minimum Wages Act, 1948, and made following pertinent observations in Paragraph Nos. 4 & 5 of the reported decision :

"4. There is also an amendment to Section 14 by addition of sub-section (1a) under the Minimum Wages (Madhya Pradesh Amendment and Validation) Act, 1961 being Act 23 of 1961. Sub-section(1a) which is inserted in Section 14 entitles the State Government by Notification to fix the limit for overtime work in a scheduled employment. This provision is not directly relevant. To claim overtime under Section 14, the following conditions must be fulfilled by an employee (1) the minimum rate of wages should be fixed under the Minimum Wages Act, 1948; and (2) such an employee should work on any day in excess of the number of hours constituting a normal working day. Therefore, overtime under Section 14 is payable to those employees who are getting minimum rate of wage as prescribed under the Minimum Wages Act, 1948. These are the only employees to whom overtime under Section 14 would become payable. In the present case, the respondents cannot be described as employees who are getting a minimum rate of wages fixed under the Minimum Wages Act, 1948. They are getting much more and that too under the Madhya Pradesh Municipal Service (Scales of Pay and Allowances) Rules, 1967. Therefore, Section 14 has no application to them. We have not been shown any other provision under which they can claim overtime.

5. The application under Section 22 of the Minimum Wages Act, is, therefore, misconceived. The respondents seem to have proceeded on the basis that because employment under any Local Authority is listed as Item 6 in the Schedule to the Minimum Wages Act, 1948, they would automatically get overtime under the said Act. Section 14, however, clearly provides for payment of overtime only to those employees who are getting minimum rate of wage under the Minimum Wages Act, 1948. It does not apply to those getting better wages under other statutory Rules.

The fact that the provisions of the Minimum Wages Act are applicable to the Public Works Department, R & B Division of State of Gujarat, is not of much importance because from the above quoted observations made by the Supreme Court, there is no manner of doubt that overtime under Section 14 of the Minimum Wages Act is payable to those employees who are getting a minimum rate of wages as prescribed under the Minimum Wages Act, 1948. These are the only employees to whom overtime under Section 14 would become payable. The employees, who are getting much more and that too under the statutory Rules, are not entitled to the benefit of Section 14 of the Minimum Wages Act. In the instant case, the respondent cannot be described as an employee who was getting a minimum rate of wage fixed under the Minimum Wages Act, 1948. Admittedly, he was getting much more and that too under the statutory Rules framed under Article 309 of the Constitution. Therefore, Section 14 is not applicable to the case of the respondent and the claim for overtime advanced by him could not have been accepted by the Labour Court. Having regard to the principles laid down by the Supreme Court in Municipal Council, Hatta (supra), it will have to be held that the judgment and order passed by the Labour Court is without jurisdiction and liable to be set aside. As the claim made by the respondent under Section 14 of the Minimum Wages Act is not tenable, it is not necessary or expedient to consider other submissions advanced at the Bar.

For the foregoing reasons, the petition succeeds. The judgment and order dated September 30, 1992 rendered by the Labour Court, Ahmedabad, in Recovery Application No. 1292 of 1986, is hereby set aside and quashed. Rule is made absolute with no orders as to costs.

(J.M.Panchal,J.)

(patel)